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Regional Technical Coordinator
Central Region

Assistant Chief Counsel (Income Tax and Accounting)
National Office TCR 17,805 - TR-45-1270-90

Technical Coordination Report Submitted by:
Robert C. Brickner
Cleveland District

Recommending: Apply IRC section 6041 to payments made to all noncorporate recipients by any insurance company and eliminate section 1.6041-3(h) of the regulations.

In his report Mr. Brickner recommends eliminating the exception provided in section 1.6041-3(h) of the regulations. This provision exempts from information reporting payments of commissions to general agents by fire insurance companies or other companies insuring property, except when the Commissioner specifically directs filing of these reports.

The recommendation resulted from finding that some fire and casualty insurance companies fail to file Forms 1099 reporting payments made to noncorporate payees who repair automobiles for the insured. Apparently these insurance companies have made a very liberal interpretation of the term "general agent" so as to include these noncorporate automobile repairers.

A general agent of an insurance company is one who is authorized to accept risks and settle terms of insurance and to carry them into effect by issuing and renewing policies. He or she stands in the stead of the company to the insured and may usually bind his or her principal as to all acts within the scope of authority. The general agent is responsible for collecting premiums, being obligated under contract only to submit the difference between the premium collected from the policyholder and the commission owed to him or her by the insurer. A local soliciting agent without authority to write or issue policies,

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who merely procures applications, collects premiums and sometimes delivers policies when payments are made, is not a general agent of the insurer. Rev. Rul. 57-474, 1957-2 C.B. 841.

Because the noncorporate automobile repairers are not general agents in the above sense, we believe this ambiguity can be resolved by publishing a revenue ruling or other guidance. We are also referring the matter for consideration as an industry-wide issue to the Industry Specialization Program.

We are not recommending that section 1.6041-3(h) of the regulations be eliminated. It is our understanding that most general agents are corporations, payments to which are not subject to information reports. Those that are not corporations must file information reports for payments to their soliciting agents who ultimately receive most of the commissions. Thus, if the fire insurance companies or other companies insuring property were required to file information reports on payments of commissions to their noncorporate general agents, there would be a duplication of information which probably would not result in additional tax.

We appreciate the interest Mr. Brickner has taken in this matter and hope that he will continue to submit his ideas. Copies of this memorandum are attached for the District Technical Coordinator, Mr. Brickner, and other interested parties.

Assistant Chief Counsel
(Income Tax and Accounting)

By (signed) RUDOLF M. PLANERT
Rudolf M. Planert
Chief, Branch 4

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